

1 In Re: JANET R. FLETCHER) DOCKET NO. 88 1297
2)
3 CLAIM NO. T-182187) DECISION AND ORDER
4)
5

6 APPEARANCES:

7
8 Claimant, Janet R. Fletcher, by
9 Aaby, Putnam, Albo & Causey, per
10 Joseph A. Albo
11

12 Self-Insured Employer, Fred Meyer, by
13 Eisenhower, Carlson, Newlands, Reha, Henriot & Quinn, per
14 Richard A. Jessup
15

16 This is an appeal filed by the claimant on March 30, 1988 from an
17 order of the Department of Labor and Industries dated February 10,
18 1988. The order set aside and held for naught an order and notice
19 dated November 3, 1987 and rejected the claim for the reasons that
20 there was no proof of a specific injury at a definite time and place
21 in the course of employment, that the claimant's condition was not the
22 result of an industrial injury as defined by the industrial insurance
23 laws, and that the claimant's condition was not an occupational
24 disease as defined by Section 51.08.140 RCW. Affirmed.

25 DECISION

26 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is
27 before the Board for review and decision on a timely Petition for
28 Review filed by the employer to a Proposed Decision and Order issued
29 on May 15, 1989 in which the order of the Department dated February
30 10, 1988 was reversed and the claim remanded to the Department with
31 direction to
32
33

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1
2 issue an order allowing the worsening of claimant's preexisting
3 symptomatic overuse syndrome of both hands, wrists and forearms as an
4 occupational disease, and directing the self-insured employer to take
5 such further action as is appropriate under the law and the facts.

6 The Board has reviewed the evidentiary rulings in the record of
7 proceedings and finds that no prejudicial error was committed and said
8 rulings are hereby affirmed.

9 The issue before us, as stated in the employer's Petition for
10 Review, is: "Whether . . . a claimant who has failed to timely appeal
11 a closing order . . . may litigate the very same issue and condition
12 by filing a new claim". Employer's PFR at 2.

13 The claimant, Janet R. Fletcher, began working as a grocery
14 checker and clerk in 1961. She worked at Fred Meyer for 13 years,
15 beginning in 1975. Her job consisted of ringing up grocery prices and
16 bagging groceries. Her job duties changed somewhat when Fred Meyer
17 switched to optical scanner checkouts. After this change, Ms.
18 Fletcher began experiencing trouble with her hands and wrists, which
19 started about two or three years after the installation of the optical
20 scanners. In 1985 she filed a claim for pain in her hands, which was
21 assigned Claim No. S-886358. A chronology of this claim as well as
22 Claim No. T-182187 is essential to a full understanding of the issue
23 raised by this appeal.

24 Date
25 1985

Claimant filed Claim No. S-886358 for
bilateral carpal tunnel complaints arising
out of employment as a checker with Fred
Meyer. The claim was allowed.

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1
2 10-3-85 Claimant was first seen by Sanford Wright,
3 M.D.
4
5
6 10-16-85 Dr. Wright performed carpal tunnel surgery on
7 the left hand.
8
9 2-20-86 Claimant returned to work as a checker with
10 Fred Meyer.
11
12 12-16-86 Claimant was again seen by Dr. Wright but no
13 treatment was provided and she was allowed to
14 return to work.
15
16 8-4-87 Claim No. S-886358 was closed with a
17 permanent partial disability award equal to
18 10% of the amputation value of the left arm
19 at any point from below the elbow joint
20 distal to the insertion of the biceps tendon
21 to and including mid-metacarpal amputation of
22 the hand.
23
24 9-21-87 Claimant stopped working at Fred Meyer and
25 apparently had not returned to that
26 employment as of February 15, 1989 when she
27 testified in these proceedings.
28
29 9-24-87 Claimant was seen again by Dr. Wright.
30
31 10-5-87 Claimant filed an application to reopen for
32 aggravation of condition in Claim No.
33 S-886358 which was signed by Dr. Wright. The
34 application listed the date she last worked
35 as September 21, 1987 and alleged a worsening
36 of her bilateral carpal tunnel syndrome
37 (Exhibit No. 3).
38
39 10-6-87 On this date the employer's service company
40 received an application for benefits alleging
41 that claimant's bilateral carpal tunnel
42 syndrome had worsened. The Department
43 received this application on October 12, 1987
44 and the claim was assigned Claim No.
45 T-182187. Like the application to reopen for
46 aggravation of condition, this new accident
47 report also listed the last date of
48 employment as September 21, 1987 and listed
49 Dr. Wright as claimant's physician. (Exhibit
50 No. 6).
51
52 11-3-87 The Department issued an order rejecting
53 Claim No. T-182187 for the reason that the
54 condition preexisted the alleged injury and

1 the claim was not filed within one year after
2 the day the alleged injury occurred.

3
4 12-16-87 Claimant filed a notice of appeal from the
5 Department order of November 3, 1987.

6
7 12-24-87 The Department issued an order holding the
8 November 3, 1987 order in abeyance.

9
10 12-24-87 The Board issued an order returning Claim No.
11 T-182187 to the Department.

12
13 1-11-88 The Department, having treated the October 5,
14 1987 application to reopen as a protest,
15 issued a further order in Claim No. S-886358,
16 affirming the August 4, 1987 closure order.
17 Claimant failed to appeal the January 11,
18 1988 order.

19
20 2-10-88 The order which is the subject of this appeal
21 in Claim No. T-182187 was issued, rejecting
22 that claim.
23

24 The Industrial Appeals Judge relied on dicta in Dennis v. Dept.
25 of Labor & Indus., 109 Wn.2d 467, 476, 745 P.2d 1295 (1987) as well as
26 our decision in In re Duane Emery McKenzie, Dckt. No. 87 0793 (July 5,
27 1988) to allow Claim No. T-182187 as an occupational disease. His
28 theory was that the conditions of claimant's employment after her
29 return to work at Fred Meyer in February 1986 exacerbated her
30 preexisting symptomatic carpal tunnel syndrome, entitling her to
31 allowance of Claim No. T-182187 as a new occupational disease claim.
32 We disagree.

33 From the chronology of events set forth above it is clear that
34 the application for benefits in Claim No. T-182187 and the aggravation
35 application/protest in Claim No. S-886358 raised precisely the same
36 issue, i.e., whether claimant's bilateral carpal tunnel syndrome had
37 worsened since her return to work in February 1986 as a result of the
38 conditions of her employment at Fred Meyer. The two documents were

1 filed almost simultaneously and alleged aggravation of bilateral
2 carpal tunnel syndrome by conditions of employment during the same
3 time period, i.e., through September 21, 1987, which is the last date
4 of

5
6 employment listed on both forms. When the Department issued its order
7 in Claim No. S-886358 on January 11, 1988, it conclusively determined
8 the status of Ms. Fletcher's carpal tunnel syndrome through that date.

9 Since no additional exposure to conditions of employment at Fred
10 Meyer was alleged beyond September 21, 1987, a period entirely covered
11 under Claim No. S-886358, there is no factual or legal basis for a
12 separate claim under Claim No. T-182187. Thus, whether Ms. Fletcher
13 seeks to characterize the alleged worsening of her carpal tunnel
14 syndrome as an aggravation under Claim No. S-886358 or as a new
15 occupational disease under Claim No. T-182187 is irrelevant.
16 Factually the physical condition alleged under both claims is one and
17 the same.

18 In essence, then, Claim No. T-182187 is nothing more than a
19 duplicate of Claim No. S-886358. Thus, the unappealed Department
20 order issued in Claim No. S-886358 on January 11, 1988 conclusively
21 determined all issues raised under either claim. As a consequence,
22 when the Department issued its February 10, 1988 order rejecting the
23 present claim, there was in fact no separate condition for which the
24 Department could have allowed the new claim. Thus the Department was
25 entirely correct in rejecting Claim No. T-182187, in light of its res
26 judicata determination with respect to the same conditions in Claim
27 No. S-886358.

FINDINGS OF FACT

1. On October 12, 1987, the claimant, Janet R. Fletcher, filed an accident report with the Department of Labor and Industries alleging bilateral carpal tunnel syndrome arising out of her employment with Fred Meyer. The claim was assigned Claim No. T-182187. On November 3, 1987, the Department issued an order rejecting the claim for the reasons that the condition preexisted the alleged injury and was not related thereto and that the claim was not filed within one year after the day the alleged injury occurred. On December 16, 1987, the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals. On December 24, 1987, the Department issued an order placing the November 3, 1987 order in abeyance. On December 24, 1987, this Board issued an Order Returning Case to Department For Further Action. On February 10, 1988, the Department issued an order setting aside and holding for naught the November 3, 1987 Department order, with the claim remaining rejected for the reasons that there was no proof of a specific injury at a definite time and place in the course of employment, that the condition alleged was not the result of an industrial injury, and that the condition alleged was not an occupational disease. On March 30, 1988, the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals. On April 12, 1988, this Board issued an order granting the claimant's appeal, assigning it Docket No. 88 1297 and directing that further proceedings be held.
2. From 1981 and continuing through September 21, 1987, claimant's job as a grocery checker/cashier for Fred Meyer required her to use an optical scanner to record items bought by customers. These duties required several thousands of repetitive movements of her hands, wrists and forearms each working day.
3. In August, 1985, claimant began experiencing symptoms in both hands, wrists and forearms. Claimant filed Claim No. S-886358 for carpal tunnel complaints arising out of employment as a checker with Fred Meyer. The claim was allowed as an occupational disease for conditions eventually diagnosed as bilateral carpal tunnel syndrome and overuse syndrome.

- 1 4. On October 3, 1985 claimant was first seen by
2 Sanford Wright, M.D. and on October 16, 1985 he
3 performed carpal tunnel surgery on the left hand.
4
- 5 5. Claimant returned to work as a checker with Fred
6 Meyer on February 20, 1986. She was again seen by
7 Dr. Wright on December 16, 1986, but no treatment
8 was provided and she was allowed to return to
9 work.
10
- 11 6. On August 4, 1987 Claim No. S-886358 was closed
12 with a permanent partial disability award equal to
13 10% of the amputation value of the left arm at any
14
15 point from below the elbow joint distal to the
16 insertion of the biceps tendon to and including
17 mid-metacarpal amputation of the hand.
18
19
- 20 7. On September 21, 1987 claimant stopped working at
21 Fred Meyer and apparently had not returned to that
22 employment as of February 15, 1989, when she
23 testified in these proceedings.
24
- 25 8. On September 24, 1987 claimant was again seen by
26 Dr. Wright and on October 5, 1987 she filed an
27 application to reopen for aggravation of condition
28 in Claim No. S-886358, which was signed by Dr.
29 Wright. The application listed the date she last
30 worked as September 21, 1987 and alleged a
31 worsening of her bilateral carpal tunnel syndrome
32 (Exhibit No. 3).
33
- 34 9. On October 6, 1987 the employer's service company
35 received a new application for benefits alleging
36 that claimant's bilateral carpal tunnel syndrome
37 had worsened. The Department received this
38 application on October 12, 1987 and the claim was
39 assigned Claim No. T-182187. Like the application
40 to reopen for aggravation of condition, this new
41 accident report also listed the last date of
42 employment with Fred Meyer as September 21, 1987
43 and listed Dr. Wright as claimant's physician
44 (Exhibit No. 6).
45
- 46 10. On January 11, 1988 the Department, having treated
47 the October 5, 1987 application to reopen as a
48 protest, issued a further order in Claim No.
49 S-886358, affirming the August 4, 1987 closure
50 order. Claimant failed to appeal the January 11,
51 1988 order.
52
- 53 11. As of February 10, 1988, claimant's ongoing
54 symptomatology was due to the conditions of

overuse syndrome and bilateral carpal tunnel syndrome which had been accepted as an occupational disease under Claim No. S-886358 and for which she had been fully compensated under Claim No. S-886358.

12. As of February 10, 1988, claimant suffered from no new condition or aggravation of her preexisting conditions of carpal tunnel syndrome and overuse syndrome as a result of distinctive conditions of her employment with Fred Meyer, beyond that for which she had already been fully compensated under Claim No. S-886358.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the subject matter and parties to these proceedings.
2. Claim Nos. S-886358 and T-182187 are duplicate claims covering the same period of exposure to conditions of employment and the same physical conditions of bilateral carpal tunnel syndrome and overuse syndrome. Claimant has been fully compensated under Claim No. S-886358 for her occupational disease of bilateral carpal tunnel syndrome and overuse syndrome. There is no additional disability or new condition which can be compensated under Claim No. T-182187. The final unappealed Department order of January 11, 1988 in Claim No. S-886358 precludes the Department from allowing the duplicate claim in Claim No. T-182187 for the same occupational disease caused by the same conditions of employment which has already been fully adjudicated under Claim No. S-886358.
3. The order of the Department of Labor and Industries dated February 10, 1988 which set aside and held for naught an order dated November 3, 1987 and rejected Claim No. T-182187 for the reasons that there was no proof of a specific injury at a definite time and place in the course of employment, that the claimant's condition was not the result of an industrial injury, and that the claimant's condition was not an occupational disease, is correct, and must be affirmed.

It is so ORDERED.

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2 Dated this 5th day of December, 1989.
3

4 BOARD OF INDUSTRIAL INSURANCE APPEALS
5

6
7 /s/_____
8 SARA T. HARMON Chairperson
9

10
11 /s/_____
12 PHILLIP T. BORK Member
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